IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR
S.B. Civil Writ Petition No.6130/2007
Reeta @ Savita & Ors. Vs. Shri Aditya Narain & Ors.

31.08.2007

Hon'ble Mr. Justice Mohammad Rafiq

Shri Sudanshu Kasliwal with
Shri K. Verma for petitioners.
Shri P.C. Shah for respondent.

Heard learned counsel for the petitioners.

The petitioners have challenged the order dated 25.7.2007 whereby their application seeking amendment in the written statement so as to plead that their deceased father has no authority to sell out the disputed property which belong to Hindu Undivided Family, has been rejected.

The learned counsel for the

petitioners argued that the learned trial court has rejected the application solely on the ground of delay and also because the earlier application moved under Order 8 Rule 1 was rejected by the trial court on 30.11.1987. It was argued that the petitioners by that time were minor and their mother as natural guardian was looking after their interest and further immediate steps were taken by her to get the written statements amended by that time and action of their mother cannot bind them. The learned counsel for the petitioner cited the judgment of Hon'ble Supreme Court in Andhra Bank vs. ABN Amro Bank N.V. & Ors., (2007) 6 SCC 167 and Usha Balashaheb Swami & Ors. Vs. Kiran Appaso Swami & Ors., AIR 2007 SC 1663 and argued that the amendment in the written

statement could not be denied merely on the ground of delay.

On the other hand Shri P.C. Shah, the learned counsel for the respondent opposed the writ petition and argued that the suit in question has been filed in the year 1974 in which original written statement was filed in the year 1974 itself. In fact a somewhat similar plea was sought to be set up by the legal representatives of the defendant no.2 who moved the application under Order 8 Rule 1 which was rejected by the trial court as far back as on 30.11.1987. The learned trial court at that time observed that if the defendant wanted to set up any such plea, the appropriate remedy for them is to get the written statement amended and only thereafter the new issue would be

framed. Even after lapse of more than 18 years, the petitioners came out with the application seeking amendment on 28.5.2005 and that too when the matter was already fixed for final hearing and 6-7 adjournments had been granted. The amendment application has thus been moved with a view to fill up the lacunas and suppressing the deficiencies and therefore lacks bonafides. It was argued that the matter was fixed for final hearing on 5.9.2007 and permitting the amendment at this stage would further delay the suit, which is even pending for more than 33 years.

The learned counsel for the petitioners at this stage rejoined and submitted that even if the written statement is not permitted to be amended,

liberty should be reserved to the petitioners to agitate this argument which according to them is purely a legal agreement.

Having heard the learned counsel for the parties and perused the material on record, I find that the learned trial court has rejected the application by a detailed and comprehensive order. I have perused the order dated 30.11.1987 in which it was indeed observed by the learned trial court that the appropriate course for setting up such plea was amendment of the written statement and not merely by making an application under Order 8 Rule 1. The application thus was highly belated and was made when the matter reached the stage of final hearing, which was deferred for various

dates. So far as the judgments of Hon'ble Supreme Court cited by learned counsel for the petitioners are concerned, those judgments cannot be applied to the fact situation of the present case where already the contesting parties were cognizant of the plea that they wanted to set up for almost two decades. As per the argument that the petitioners should be allowed to agitate their submission during argument, I need not dwell much upon that because if according to the perception of the petitioners themselves, a legal plea which can be agitated even without corresponding pleadings, it is for them to canvass the argument to that effect before the trial court and to persuade the trial court.

I do not find any merit in this

writ petition. The writ petition is dismissed.

(Mohammad Rafiq),J.

Rs/-